



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160065

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 25, 2014, at West Bend, Wisconsin.

The issue for determination is whether Washington County Department of Social Services (the agency) correctly denied Petitioner's application for FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Williamson, Economic Support Lead Worker
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On August 22, 2014, the Petitioner completed an on-line ACCESS Renewal. (Exhibit 9)

3. On August 22, 2014, the agency sent the Petitioner a notice, indicating that her application for FoodShare benefits was denied because her household was over the income limit. (Exhibit 8)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 22, 2014. (Exhibit 1)
5. Petitioner's household consists of four people. (Exhibit 8)
6. Petitioner's gross household Income consists of earned income from her job and her husband's jobs, which totals \$4,451.67 per month, using 4.3 week month for Foodshare purposes. (Exhibits 4, 5, 6 and 10)

DISCUSSION

"Participation in the FoodShare Program is limited to those food units whose income is determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." *FoodShare Wisconsin Handbook (FSH) §4.3.1* To be categorically eligible, FoodShare groups without elderly, blind or disabled members must have income at or below 200% of the Federal Poverty Level (FPL). *FSH §4.2.1.1; 7 CFR 273.2(j)(2)*. "If the household's gross income goes over 200% of FPL, the case will close." *Id.* 200% of FPL for households with four people is \$3926 per month. *FSH §8.1.1.1*

The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1*. The allotment calculation is based on **prospectively** budgeted monthly income using estimated amounts. *FSH §4.1.1*.

In the case at hand, the Petitioner does not dispute the agency's calculation of her gross income and I can find no significant error in their calculations. Petitioner filed an appeal because she feels it is unfair to apply the rule requiring consideration of gross income to her case.

Petitioner's argument is equitable in nature, but Administrative Law Judges do not possess equitable authority and must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates.[citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for FoodShare benefits.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

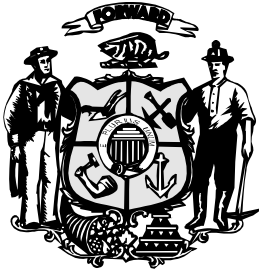
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 14, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability